

1 that time?

2 A. Yes.

3 Q. And at some point during the lying, you decide to
4 start telling the truth?

5 A. That's right.

6 Q. Now when you first began talking with the
7 detectives there, they were talking to you about what
8 had happened out at Richard Blazer's house, am I right?

9 A. Yes.

10 Q. That was the first topic that they were covering
11 with you?

12 A. Yes.

13 Q. They weren't talking to you about what had
14 happened to Mark McDonald, had they?

15 A. That's right.

16 Q. And of course they're interested in what happened
17 at Blazer's house because they had just chased or some
18 officers had just chased you from Blazer's house to the
19 point where you were captured?

20 A. That's right.

21 Q. But at some point while you were being
22 interviewed by the detectives about the Blazer case, the
23 topic shifted and they began to ask you questions about
24 the Mark McDonald's case?

25 A. No. They didn't ask me no questions.

1 Q. Oh, somehow the topic shifted without anyone
2 asking any questions?

3 A. That's right.

4 Q. Did the topic of whether or not Blazer was a
5 homosexual come up?

6 A. No, there wasn't.

7 Q. And did the topic of whether or not McDonald was
8 a homosexual ever come up?

9 A. No, there wasn't.

10 Q. No one ever discussed that at any time?

11 A. No, there wasn't.

12 Q. Now your testimony today is something you have
13 prepared simply by thinking back over what has happened
14 during these last eight months, is that right?

15 A. Of what I know that happened in the day in
16 question.

17 Q. Okay. You've met with the detectives back at the
18 time you were arrested?

19 A. Yes, I did.

20 Q. And they interviewed you and I guess after you
21 decided to tell them what they wanted to know, you
22 answered all of their questions?

23 A. Yes, I did.

24 Q. And you were willing to answer every question
25 they asked?

1 A. Yes, I did.

2 Q. And they believed what you were telling them at
3 that time?

4 A. Yes, they did.

5 MR. SLAVENS: Objection to that.

6 THE COURT: Sustained as to form.

7 BY MR. ARNTZ:

8 Q. You really don't know whether they believed you
9 or not, do you?

10 A. No.

11 Q. Okay. And did it occur to any of these
12 detectives to ask you to write out a statement about
13 what you had done?

14 A. No.

15 Q. And to this day, eight months later, have you
16 ever written out a statement about what had occurred in
17 the McDonald case or the Blazer case?

18 A. Not as I know of.

19 Q. Not as you know of?

20 A. Right.

21 Q. You would know whether or not you wrote one out
22 or not?

23 A. Yes.

24 Q. As you sit there, do you remember writing one
25 out?

1 A. Not as I know of.

2 Q. Well, remember, I asked you about your memory
3 this morning?

4 A. Yes.

5 Q. Are you having a memory problem with that
6 question?

7 A. If I wasn't, it wouldn't be your business. Like
8 I said, no, as I know of, I cannot remember if I did one
9 or not at the moment.

10 Q. You might have written out a statement for a law
11 enforcement officer and not be able --

12 A. Ask law enforcement officer.

13 Q. -- any law enforcement officer who was
14 investigating the case?

15 A. Let me think. No, I didn't.

16 Q. Now, this plea bargain you entered into, we've
17 already agreed, I think, was something negotiated
18 between you and your attorney and the prosecutor, am I
19 right?

20 A. Yeah.

21 Q. Okay. And I think you also told me you were
22 trying to make the best deal that you could for
23 yourself, am I right?

24 A. The only deal I could get.

25 Q. The only deal you could get.

1 And how many charges did you have originally when
2 you were indicted?

3 A. I think five.

4 Q. Five.

5 And the most serious charge you were indicted for
6 was aggravated murder, wasn't it?

7 A. Yes, it was.

8 Q. And you had two aggravated murder charges, didn't
9 you?

10 A. Yes, I did.

11 Q. And that is because you were responsible for the
12 murder of two people, am I right?

13 A. Yes, I suppose so.

14 Q. You suppose so?

15 A. Yes.

16 Q. Do you have some doubts about that now whether
17 you have any responsibility for the killing of two
18 people?

19 A. I don't know. Go ahead.

20 Q. And these aggravated murder charges carry the,
21 what penalty?

22 A. Life imprisonment.

23 Q. Life imprisonment.

24 So each of those two aggravated murder charges
25 carried a life sentence, is that right?

1 A. Yes, they do.

2 Q. At one time you believed you were eligible for
3 the death penalty, do you remember that?

4 A. Yes, I was.

5 Q. When were you eligible for the death penalty in
6 this case?

7 A. I think when I was first indicted.

8 Q. How do you know that?

9 A. Because it said it on my indictment.

10 Q. Somewhere on your indictment it said you were
11 being charged with a capital death penalty?

12 A. No. It said life or death.

13 Q. Life or death?

14 A. So I, I assumed I had the death spec.

15 Q. So you assumed you had the death spec on you.

16 When did someone clear that up for you?

17 A. My lawyer came up and, up and said I didn't have
18 the death spec on me.

19 Q. When did he say that to you?

20 A. I don't know what day.

21 Q. Well, do you know what month it was when you
22 first learned you were not eligible for the death
23 penalty?

24 A. No, I don't.

25 Q. Can you tell me whether that was this month or

1 last month?

2 A. No. It was neither month.

3 Q. It was one month last year?

4 A. Yeah.

5 Q. Was it within a day or two after you had been
6 indicted or was it sometime last November or December?

7 A. As I said earlier, I don't know what day or what
8 month.

9 Q. You didn't make a point of remembering when it
10 was that you discovered that your life could not be
11 taken for this offense?

12 A. Huh? I didn't hear you.

13 Q. You just can't remember at all when you were told
14 that?

15 A. No, I didn't know what day or what month.

16 Q. Now, the other charges that were brought against
17 you were one count of aggravated robbery for Mark
18 McDonald and is a second count of aggravated robbery for
19 Richard Blazer, am I right?

20 A. That's right.

21 Q. And what were the maximum possible penalties that
22 you could have received for committing those two
23 aggravated robberies?

24 A. I have no idea.

25 Q. You have no idea?

1 MR. SLAVENS: Objection, your Honor,
2 that's what the witness' answer is.

3 THE COURT: That's the answer. Sustain
4 the objection.

5 MR. ARNTZ: Okay.

6 BY MR. ARNTZ:

7 Q. Well, whatever day that was you were talking with
8 your lawyer about whether your life could be ended, that
9 is whether this was a death penalty case, do you
10 remember whether you ever asked him what the penalty was
11 for aggravated robbery?

12 A. No, I didn't ask him.

13 Q. You mean all these eight months to this very day
14 you have never asked anyone what the penalty is for
15 aggravated robbery?

16 A. That's right.

17 Q. That's right?

18 Were you ever curious as to what might happen to
19 you if you were convicted of these two felonies?

20 A. Yeah.

21 Q. You were curious but not curious enough to ask
22 anyone?

23 A. No.

24 Q. No.

25 And I guess, likewise, you didn't care really

1 what penalty you might receive for the aggravated
2 burglary charge either?

3 A. No.

4 Q. You were completely indifferent to what kind of
5 penalty or punishment you might suffer if you were
6 convicted of these charges?

7 A. Well, no. I was more worried about the life, the
8 life sentences than I was those.

9 Q. Worried about the life sentences. You were
10 worried you might actually have to serve a life
11 sentence, isn't that it?

12 A. Yeah.

13 Q. In fact, you were worried you might actually have
14 to serve two life sentences for what you done?

15 A. I never thought about that.

16 Q. Well, Walter, you saw that you were eligible, in
17 fact, you were going to receive two life sentences if
18 you were convicted of two aggravated murders, am I
19 right?

20 A. I thought I was going to get life, yeah.

21 Q. Two life sentences?

22 A. I didn't know that I was going to get two life
23 sentences.

24 Q. All these eight months that you talked with your
25 lawyer, he never told you you were going to receive two

1 life sentences if you were convicted of two aggravated
2 murders?

3 A. I don't recall.

4 Q. You don't recall.

5 Was that important to you whether you served one
6 life sentence or two as a result of being involved in
7 these murders?

8 A. Repeat the question.

9 Q. Was it important to you whether you were going to
10 serve one life sentence or two for participating in
11 these murders?

12 A. Yeah, it was important.

13 Q. It was important. But you don't remember whether
14 you ever asked anyone or anyone ever told you that you
15 would actually be given two life sentences if you were
16 convicted of both aggravated murders?

17 A. Yeah, I guess so. Yeah, you're right.

18 Q. You guess somebody did tell you that?

19 A. Yeah, you're right.

20 Q. Well, do you remember whether somebody told you
21 that the life sentence in Ohio meant 20 years to life?

22 A. Yeah.

23 Q. Did that come back?

24 A. Twenty years to the parole board.

25 Q. Twenty years to the parole board. And then what

1 happens at the parole board?

2 A. Either you get flopped or you get released.

3 Q. What was that word you used?

4 A. Flopped.

5 Q. What does that word --

6 A. You either get extra time extended on or you get
7 released.

8 Q. And each of these aggravated murder charges carry
9 a sentence of 20 years to life?

10 A. Yes.

11 Q. Am I right?

12 A. (No verbal response.)

13 Q. What happens to you if you get convicted of two
14 aggravated murders? What happens to the sentence, do
15 you know?

16 A. What do you mean, what happens to the sentence?

17 Q. Well, my question is, when do you go to the
18 parole board for the first time if you were convicted of
19 two aggravated murders?

20 MR. SLAVENS: Objection, your Honor.

21 BY MR. ARNTZ:

22 Q. If he knows.

23 A. I don't know.

24 BY MR. ARNTZ:

25 Q. You don't know?

1 THE COURT: Well, overrule the
2 objection. The answer is, he doesn't know.

3 MR. ARNTZ: All right.

4 BY MR. ARNTZ:

5 Q. Have you ever asked your lawyer when you might go
6 to the parole board if you were found guilty of two
7 aggravated murders?

8 A. No, I didn't.

9 Q. When you took the only deal you could get, which
10 was to plead to two aggravated murders, did you become
11 curious as to what kind of a sentence you might serve
12 for that?

13 A. Yeah, in a way.

14 Q. In a way.

15 Well, as you sit there, what kind of
16 incarceration do you expect to serve for having pled
17 guilty to two aggravated murders?

18 A. Two life sentences.

19 Q. And when do you expect to see the parole board
20 for the first time?

21 A. Whenever I see them.

22 MR. SLAVENS: Objection, your Honor. He
23 said he doesn't know.

24 THE COURT: Sustained.
25

1 BY MR. ARNTZ:

2 Q. Well, when you pled guilty to two aggravated
3 murders in this courtroom a couple weeks ago, was there
4 anything said at the time about whether these two life
5 sentences would run together at the same time or whether
6 they would run one after the other?

7 A. No.

8 Q. Did anyone use the words concurrent or
9 consecutive in describing what kind of life sentences
10 you might receive?

11 A. No, there wasn't.

12 Q. And in your discussions with your lawyer these
13 eight months, he has never talked to you about whether
14 you could be made to serve the first 20 years to the
15 board and then a second 20 years to the board before you
16 are eligible for release?

17 A. No, he never mentioned nothing about that.

18 Q. When you decided to take this deal, did you not
19 have -- strike that.

20 Did you have any interest in seeing that these
21 two life sentences would be run together?

22 A. Did I have any interest?

23 Q. Yes, sir.

24 A. Yes, I did have interest hoping that they would
25 be.

1 Q. When we say run together, we mean no more than 20
2 years to the parole board, is that correct?

3 A. Yes.

4 Q. Because if those two sentences are not run
5 together, the way you want them run together, you might
6 wait 40 years to go to the parole board, is that right?

7 MR. SLAVENS: Objection, your Honor. He
8 said he didn't know.

9 THE COURT: That's a different
10 question. Overruled.

11 A. What are you trying to say? Repeat the question.

12 BY MR. ARNTZ:

13 Q. You said you were interested in having these two
14 life sentences, 20 years to life, run together?

15 A. Yes, I was.

16 Q. So that you could go to the parole board in 20
17 years or so if you could. Do you remember that?

18 A. Yes.

19 Q. Now, do you remember that you were also
20 interested in not having those sentences run one after
21 the other because you would wait a lot longer to go to
22 the parole board?

23 A. That's right.

24 Q. In fact, you could wait an extra 20 years to go
25 to the parole board, couldn't you?

1 A. Yes.

2 Q. And that would be a total of 40 years you would
3 have to wait to go to the parole board?

4 A. Yes.

5 Q. All right. And how old are you now?

6 A. Twenty-two.

7 Q. Twenty-two. And if you waited 40 years to go to
8 the parole board, how old would you be?

9 A. Sixty-two.

10 Q. And that would be most of your life, wouldn't
11 it --

12 A. Yes.

13 Q. -- to spend in prison?

14 A. Yes.

15 Q. And you thought that by pleading guilty to two
16 aggravated murders you had a better chance of having the
17 two life sentences run together, didn't you?

18 A. It's better than going to prison on all the
19 charges and run separately 'cause then I will never get
20 out.

21 Q. My question, Walt, was whether you thought at the
22 time you entered a guilty plea to two aggravated murders
23 you thought you had a better chance of having the two
24 life sentences run together at the same time?

25 A. I was hoping that I would get the chance of

1 having them run together.

2 Q. You were hoping to do, only do 20 years to the
3 parole board, that's why you took this deal?

4 A. No. I took the deal because I understand that
5 either I was going to do 20 to the board or the other,
6 you know, both of them, 40, 20 to 40 or however long it
7 took.

8 Q. But you thought you might serve less time by
9 taking this plea bargain?

10 MR. SLAVENS: Objection, your Honor.

11 THE COURT: Overruled.

12 BY MR. ARNTZ:

13 Q. Am I right?

14 A. Repeat the question.

15 Q. You thought you would serve less time in prison
16 if you took this plea bargain?

17 A. No, it wasn't thinking, I was hoping.

18 Q. You were hoping?

19 A. Yes.

20 Q. Well, what did the prosecutor do for you when you
21 agreed to plead guilty to two aggravated murders?

22 A. What do you mean?

23 Q. Well, you know what a bargain is, don't you?

24 A. Yes, I do.

25 Q. That's where each person gives the other person

1 something?

2 A. Yes.

3 Q. And you gave the prosecutor a plea of guilty to
4 two aggravated murders?

5 A. Yes.

6 Q. So in this plea bargain, what did he give you?

7 A. He dropped the other charges.

8 Q. He dismissed the aggravated robbery charge?

9 A. Yes.

10 Q. And he dismissed the second aggravated robbery
11 charge?

12 A. Yes.

13 Q. And he dismissed the aggravated burglary charge?

14 A. Yes, he did.

15 Q. And you weren't told that those could carry 10 to
16 25 years each?

17 A. I had an idea of what they might have carried but
18 I wasn't for sure.

19 Q. Well, you had an idea it was in the range of 10
20 to 25 years for each one of these felonies, didn't you?

21 A. Between to five to ten.

22 Q. Five to ten.

23 You already told me that you had been reading the
24 Ohio Revised Code to learn about the law. Do you
25 remember that?

1 A. About life sentences on aggravated murder.

2 Q. You were aware this range of numbers 5, 6, 7, 8,
3 9, or 10 were the minimum numbers you could receive for
4 aggravated robbery, am I right?

5 A. Yes.

6 Q. You were also aware you could serve a maximum of
7 25 years for each aggravated robbery and the aggravated
8 burglary?

9 A. I didn't know about the burglary.

10 Q. I'm sorry?

11 A. I didn't know about the burglary.

12 Q. You didn't know what the maximum was on the
13 burglary?

14 A. I didn't know what the penalty was period for
15 burglary.

16 Q. All right. But you knew that the aggravated
17 robberies could cause you to be incarcerated for as much
18 as 25 years on each one of those, didn't you?

19 A. Yes, I did.

20 MR. SLAVENS: Objection, your Honor.

21 THE COURT: Overruled.

22 BY MR. ARNTZ:

23 Q. What did you say?

24 A. Yes, I did.

25 Q. You knew that?

1 A. I knew the maximum.

2 Q. You knew the maximum was 25 years?

3 A. Yes.

4 Q. All right. And if you were convicted of two
5 aggravated murders and aggravated robbery of Blazer and
6 McDonald, and of the aggravated burglary, did you ever
7 add up how much time you might serve for all of that?

8 A. I would never get out.

9 Q. I'm sorry?

10 A. I would never get out.

11 Q. Walt, my question, did you ever add up how much
12 time you might serve for that?

13 A. No, I had not.

14 Q. You would die in prison, wouldn't you?

15 A. Probably.

16 Q. You knew that, that's why you took this deal, am
17 I right?

18 A. No.

19 Q. You didn't care whether you died in prison or
20 not?

21 A. Yeah, everybody cares.

22 Q. Well, in addition to giving the prosecutor a plea
23 to two aggravated murders, you also gave him something
24 else, didn't you?

25 A. Like what?

1 Q. Well, I'm asking you if you remember promising to
2 do anything else for him?

3 A. I didn't promise nothing. I said I would
4 testify.

5 Q. Well, you promised you would testify, didn't you?

6 A. I said I would testify.

7 Q. In fact, if you weren't here today testifying,
8 this deal would be torn up and thrown away, wouldn't it?

9 A. I have no idea.

10 Q. Huh?

11 A. I don't have no idea.

12 Q. Didn't you sign a piece of paper saying this deal
13 would be torn up and thrown away if you don't come in
14 here and testified against your brother?

15 A. It didn't say that I had to.

16 Q. Well, you promised and agreed to, didn't you?

17 A. But it didn't say I had to.

18 Q. Well, what did you think would happen to you if
19 you said you would testify against your brother in this
20 trial and then went back on your word?

21 A. I don't know.

22 Q. You thought you could back out at any time and
23 the laugh would be on the prosecutor?

24 A. No.

25 Q. You're telling us that your lawyer never told you

1 that the deal was off if you didn't come in here and
2 testify against your brother?

3 A. He didn't tell me but I thought that was the way
4 it was.

5 Q. You knew that the deal was off if you didn't come
6 in here and testify against your brother, isn't that the
7 truth?

8 A. Yeah.

9 Q. All right. In fact, the deal required you to
10 cooperate with the prosecutor in every way, didn't it?

11 A. What do you mean?

12 Q. Well, do you remember the words cooperation being
13 used when you signed that piece of paper agreeing to
14 take this deal?

15 A. Yes.

16 Q. What did the word cooperation mean to you?

17 A. Cooperate.

18 Q. Do whatever he asked, isn't that right?

19 A. I suppose so, yes.

20 Q. If you do whatever the prosecutor asks and
21 testify against your brother, your chances of getting
22 that life sentence run together with the other life
23 sentence improves?

24 A. I have no idea if it does or not.

25 Q. Oh, you think, you think that whether or not you

1 testify here today and cooperate isn't going to have any
2 effect at all on whether you receive one or two life
3 sentences?

4 A. I said I haven't been promised nothing.

5 Q. You haven't been promised nothing. But, in fact,
6 your lawyer has talked to you about whether your chances
7 improve for one life sentence if you do everything?

8 A. He didn't say anything about improving.

9 Q. But you think it will improve?

10 A. I don't have no idea if it will or not.

11 Q. You have no idea.

12 Do you remember telling Mrs. Kuehn1 that you
13 wanted to be a prosecutor yourself?

14 A. I wanted to be a lawyer or a prosecutor, yes, I
15 did.

16 Q. Do you remember telling Mrs. Kuehn1 that you
17 thought the job of a prosecutor was to hang people?

18 A. No. To help people.

19 Q. To help people.

20 And you're the kind of person who helps people?

21 MR. SLAVENS: Objection, your Honor.

22 It's argumentative.

23 THE COURT: Sustained.

24 MR. ARNTZ: May I have just a moment?

25 THE COURT: You may.

1 MR. ARNTZ: Thank you.
2 Okay, Walter, that's all I
3 have of you. Thank you.

4 THE COURT: Thank you.
5 Redirect examination, Mr.
6 Slavens.

7 MR. SLAVENS: I have just a couple of
8 questions. It won't take too long.

9 REDIRECT EXAMINATION

10 BY MR. SLAVENS:

11 Q. And you were asked a question as to some
12 photographs about the automobile?

13 A. Yes, I was.

14 Q. And I think you were looking at photograph
15 exhibit number 64 and see if I'm wrong. Let me show you
16 66 and 64. I'm going to ask you, are these the
17 photographs that were shown to you, I don't know when,
18 this morning maybe, by attorney Arntz?

19 A. Yes, they were.

20 Q. These are two that he used?

21 A. Yes.

22 Q. Now, do you know where that car was when that
23 photograph was taken? Can you tell, tell from that
24 photograph where the car is?

25 A. No, I don't.

1 Q. You don't know if this is a photograph of the car
2 over at McOwen Street or someplace after it's been with
3 the police for some days?

4 A. I have no idea.

5 Q. Now you indicated as to how you were, I think the
6 word was, ducked down in the back seat and I explained
7 that to you?

8 A. Yes, I did.

9 Q. When you were down in the back seat, where was
10 Weston Lee Howe?

11 A. Ducked, he was crunched down on the front
12 floorboard on the passenger side.

13 Q. How was he situated when Mr., when the guy we
14 call McDonald in the field came up to that car?

15 A. I can't recall. I didn't see him.

16 Q. When you go into Mr. Blazer's house?

17 A. Yes.

18 Q. After you pulled out your gun, what does
19 Mr. Blazer, what does he do?

20 A. He stood there for a few minutes then he said,
21 what is this? Then he started screaming at Tony.

22 Q. When you say screaming, do you mean screaming?

23 A. Yelling.

24 Q. What does Tony do?

25 A. He says a few things back to him and starts to

1 turn around.

2 Q. What does Mr. Blazer do?

3 A. Follow him.

4 Q. Now, when is it in this process that you fired
5 the gun?

6 A. After Tony turned around.

7 Q. You fired the gun and then Mr. Blazer still
8 leaves out the door?

9 A. Yes.

10 Q. When you were at the police station.

11 A. Yes.

12 Q. And you indicated you met Detective Lawson and a
13 Detective Spells?

14 A. Yes, I did.

15 Q. And they didn't lie to you, did they?

16 A. No, they didn't.

17 Q. They didn't trick you?

18 A. No.

19 Q. You tried to lie to them for a short time or
20 sometime?

21 A. Yes, I did.

22 Q. Then you told us what you told us today?

23 A. Yes, I did.

24 Q. Then you told them.

25 There is a lot of questions about the videotape.

1 And there is one question about whether or not you wrote
2 out anything to those detectives.

3 A. Yes.

4 Q. Rather than writing out something to those
5 detectives, you sat down with them, they put a camera on
6 you and they videotaped the interview of you, didn't
7 they?

8 A. Yes, they did.

9 Q. And as part of the agreement called, call it a
10 bargain or whatever the defense counsel wants to call
11 it, you pled guilty to two counts of aggravated murder
12 each carrying a life penalty, didn't you?

13 A. Yes, I did.

14 Q. And as part of that agreement was for you to come
15 in court and to testify truthfully, wasn't it?

16 A. Yes, it was.

17 MR. SLAVENS: Thank you. That's all I
18 have.

19 THE COURT: Recross.

20 RECROSS-EXAMINATION

21 BY MR. ARNTZ:

22 Q. Walter, what would happen if you came into this
23 courtroom and said now that your brother did not shoot
24 these two people?

25 MR. SLAVENS: Objection, your Honor.

1 THE COURT: Sustained.

2 BY MR. ARNTZ:

3 Q. Walter, part of the agreement is that you testify
4 consistently with what you last told the detectives,
5 isn't that true?

6 MR. SLAVENS: Objection, your Honor.

7 THE COURT: Overruled. You can answer
8 that.

9 A. What is consistently mean?

10 BY MR. ARNTZ:

11 Q. Well, the question is, you last told the
12 detectives that your brother killed both of these
13 people, didn't you?

14 A. Yes, I did.

15 Q. And part of the understanding here is that you
16 come into this courtroom and tell a jury that your
17 brother killed those people, isn't that true?

18 A. Tell them the truth.

19 Q. Well, and part of the agreement is that you tell
20 them that your brother did this, isn't that true?

21 A. Tell them the truth.

22 MR. ARNTZ: May I ask the Court to
23 direct the witness to answer the question?

24 THE COURT: Well, there is a problem
25 with the way it's worded.

1 Do you understand the
2 question?

3 A. Yes, I do.

4 THE COURT: Mr. Polson, do you want to
5 explain your answer?

6 A. The truth of what happened that night was that my
7 brother did shoot both of them men.

8 BY MR. ARNTZ:

9 Q. And your brother wanted them dead for some
10 reason?

11 A. I don't know what he wanted.

12 Q. He didn't have any reason to want them dead?

13 A. I don't know. I ain't in his mind.

14 Q. Tony was the one who wanted money, isn't it?

15 A. We all wanted money.

16 MR. SLAVENS: We are arguing and going
17 beyond the scope.

18 THE COURT: This is beyond the scope,
19 Mr. Arntz. Sustain the objection.

20 BY MR. ARNTZ:

21 Q. And when you left Richard Blazer, you thought
22 that he was dead?

23 A. I didn't have no idea if he was or not.

24 Q. No idea.

25 He was laying there in front of his house and he

1 wasn't moving, was he?

2 MR. SLAVENS: Objection, your Honor.

3 THE COURT: If he knows. Overruled.

4 A. He was laying there but I don't know if he was
5 dead or not.

6 MR. ARNTZ: Thank you. That's all.

7 MR. SLAVENS: That's all I have.

8 THE COURT: All right. Before the
9 witness is excused, why don't I go ahead and excuse
10 the jury for the weekend.

11 Let me see counsel as to
12 what time we want to start on Monday. That's the only
13 thing we are going to be talking about. We are done
14 for the day other than what time we are going to start
15 Monday morning.

16 (WHEREUPON, a side-bar conference was held
17 off the record.)

18 THE COURT: Ladies and gentlemen of the
19 jury, we will go ahead and take our evening recess
20 now, which obviously involves the entire weekend of
21 Saturday and Sunday. And we'll reconvene Monday
22 morning at 9 o'clock. Now the weather forecast is
23 supposed to be good, so hopefully we won't have any
24 problems Monday but keep an eye on the weather. As we
25 know, anybody lives in Dayton, Ohio, for more than a

1 couple of days, things can change in a hurry. We will
2 reconvene. I assure you we will start promptly at 9
3 o'clock, all right.

4 Now, it is the weekend.
5 There will be media coverage of the case over the
6 weekend. I'm just going to simply tell you that
7 straight up. Stay away from it, no newspaper, no
8 radio or television. We know the cameras were here
9 this morning. Keep away from all three channels. You
10 never know when something is going to pop up in a
11 promotion in the middle of a TV show. I'm not telling
12 you not to watch television. I'm simply telling you
13 to stay away from any news coverage because, as you
14 all know, they weren't even here in the afternoon.
15 And that's exactly one of the reasons, among many
16 others, why you're instructed not to view any news
17 media coverage. You're hearing all the facts as
18 they're presented in the courtroom. You're hearing
19 them all, not just part of it.

20 Now, again, remember the
21 usual instruction from the Court not to discuss the
22 case among yourselves or with anybody else. Don't
23 form any opinions.

24 I think that it's safe to
25 tell you that we'll get into Tuesday. I'm trying to

1 give you as much advance notice as possible at this
2 point. We are not that far behind however, but I
3 wanted you to know now it's a safe assumption we'll be
4 in session on Tuesday.

5 The only other instruction
6 is have a nice, safe weekend. See you Monday morning.

7
8 (WHEREUPON, the proceedings were then
9 concluded for February 26, 1993, at the hour of 4:23
10 p.m.)

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1 (March 1, 1993 - Morning Session)

2 IN CHAMBERS

3 THE COURT: Let the record reflect we
4 are in chambers and Mr. Elofskey will be brought in.

5 Does Mr. Howe specifically
6 again waive his right to be present for this brief
7 caution of the witness?

8 MR. ARNTZ: Yes, we would.

9 THE COURT: Present are all counsel.
10 Good morning, Mr. Elofskey.
11 Mr. Elofskey, the only
12 reason you're brought in -- we did this with
13 Mr. Polson also -- obviously, you're going to be
14 testifying under oath.

15 MR. ELOFSKEY: Right.

16 THE COURT: You simply tell the truth
17 according to the oath. I want to caution you simply
18 not to mention a few things such as racism. We are
19 talking about Mr. Howe. Anything as it relates to his
20 philosophies of racism, Nazism, his interest in the
21 white supremacy, keep away from the fact that you know
22 that he's on parole. In other words, just don't
23 discuss things that aren't related to the case itself.

24 MR. ELOFSKEY: Okay.

25 THE COURT: Just answer the questions

1 the lawyers ask you.

2 There is another area here,
3 the tattoos. You obviously got a tattoo. We all know
4 that Mr. Howe has got some tattoos also. Keep away
5 from things that aren't connected with the case.

6 MR. ELOFSKEY: Okay.

7 THE COURT: All right. Anything from
8 counsel?

9 MR. SLAVENS: No. I think the caution
10 was in regards to the fact that Mr. Howe's previously
11 been convicted.

12 THE COURT: Right.

13 MR. SLAVENS: Was in prison and on
14 parole.

15 THE COURT: Keep away from any
16 reference to that while you're testifying. Do you
17 understand?

18 MR. ELOFSKEY: Yeah.

19 THE COURT: Fair enough?

20 MR. ELOFSKEY: Also, is my two attorneys
21 here?

22 THE COURT: I do not know. Did you
23 want them here?

24 MR. ELOFSKEY: Rudy Wehner, I told him I
25 didn't want the camera in the courtroom.

1 MR. SLAVENS: That's been -- I told that
2 to the camera people. I don't think they're even
3 here. I haven't heard. I think they left.

4 THE COURT: That was the same thing.

5 MR. SLAVENS: Take a quick look.

6 (WHEREUPON, Mr. Dundes left the room.)

7 THE COURT: I advised them not to film
8 the witness because that's your right. You do not
9 have to be filmed. They are permitted to take audio,
10 that's the voice, but not the camera.

11 MR. ELOFSKEY: Right.

12 MR. DUNDES: They're not in there.

13 THE COURT: They're not in there.

14 Don't worry about it.

15 We will proceed. Why
16 don't you put him on the witness stand and we'll go
17 from there.

18

19 (WHEREUPON, in-chambers proceedings were
20 then concluded.)

21

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25

1 IN OPEN COURT - BEFORE THE JURY

2 9:26 a.m.

3 THE COURT: Good morning, ladies and
4 gentlemen of the jury.

5 THE JURY: Good morning.

6 THE COURT: I see everybody made it
7 safely. I hope everybody had a nice weekend.

8 Would you swear the witness
9 in first.

10

11 TONY DWAYNE ELOFSKEY, having been first duly
12 sworn according to law, was examined and
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SLAVENS:

16 Q. Will you tell us your name, please?

17 A. Tony Dwayne Elofskey.

18 Q. You're going to have to speak a little louder so
19 we can hear you.

20 A. Tony Dwayne Elofskey.

21 Q. How old are you?

22 A. Twenty-one.

23 Q. Did you grow up in Dayton, Ohio, area?

24 A. Yes, I did.

25 Q. Did you go to high school in the Dayton, Ohio,

1 area?

2 A. Most of it.

3 Q. And to what high school did you go to in Dayton,
4 Ohio, area?

5 A. Last one was Stivers.

6 Q. And what grade did you get to at Stivers?

7 A. Last school I attended to was Tecumseh, New
8 Carlisle. I made it to tenth grade.

9 Q. Are you familiar with the person by the name of
10 Walter Polson and another person by the name of Weston
11 Lee Howe?

12 A. Yes, I am.

13 Q. And concerning Mr. Walter Polson, do you recall
14 approximately when it was that you first met him?

15 A. Back around '88 or '89.

16 Q. And the person you know as Weston Lee Howe, when
17 did you ever first see or hear or get to know of him?

18 A. Well, recently mainly.

19 Q. Did you ever run around with Mr. Howe, Weston Lee
20 Howe?

21 A. Recently. Right before this case started.

22 Q. When you say before the case started --

23 A. Before I caught the case.

24 Q. Let me be more specific. In regards to June 22d,
25 1992, before that date, did you ever run around with Mr.

1 Howe?

2 A. No.

3 Q. I would like to ask you some questions about that
4 particular date and the days around that, the day before
5 and a couple days after.

6 Specifically, I would like to direct your
7 attention to the date of Sunday, June 21st, 1992, and
8 ask if you recall sometime during that evening being
9 contacted or meeting up with Mr. Polson and Weston Lee
10 Howe?

11 A. Yes, I do.

12 Q. And where did that occur? How did that occur?

13 A. It happened on the side of June Street, which is
14 up off of east end of Dayton. And they asked me to go
15 look for their girlfriends.

16 Q. And you say off of east --

17 A. Off East Fifth Street.

18 Q. What is at June and Fifth Street?

19 A. My cousin's house.

20 Q. And had you been staying there?

21 A. Yes, I have.

22 Q. When you make reference to Weston Lee Howe, do
23 you see the person who you were referring to as Weston
24 Lee Howe present today in this courtroom?

25 A. Yes, I do.

1 Q. And for the record today, where is he located?

2 A. Sitting over there at the table with the white
3 shirt on, gray tie.

4 MR. SLAVENS: Let the record reflect the
5 witness has indicated the defendant, your Honor.

6 THE COURT: It will so indicate.

7 BY MR. SLAVENS:

8 Q. Approximately what time was it that this occurred
9 that you met up with Mr. Weston Lee Howe and Walter
10 Polson?

11 A. It was late.

12 Q. What were you doing?

13 A. I was going home.

14 Q. And do you recall what you were specifically
15 doing when they came up to you?

16 A. Putting my kicker boxes in the trunk of my car.

17 Q. When you say kicker boxes, what do you mean?

18 A. Stereo speakers.

19 Q. How were you doing that and why were you doing
20 that?

21 A. Keeping them from getting stolen.

22 Q. And how do you do that?

23 A. Just unplug them and stick them in the trunk.

24 Q. And where was your car at that time when this
25 occurred?

1 A. At the corner of June Street.

2 Q. Oh, okay. And so you were asked to go look for
3 the girlfriends?

4 A. Yes.

5 Q. Do you know their names of the girlfriends?

6 A. Angie Bazer and Terri Lynn Elofskey.

7 Q. And Terri Lynn, is she related to you?

8 A. She's my cousin.

9 Q. So what happened?

10 A. We went looking for them and didn't find them.

11 Q. And what do you all do then after you don't find
12 the ladies?

13 A. I took them two to their house, which is on
14 Valley Street, where they found their girlfriends at.

15 Q. And about what time was that?

16 A. In the early morning hours, probably around one
17 or two.

18 Q. Then what happened after that?

19 A. I went home.

20 Q. And I would like to direct your attention to a
21 time over on, you were with those individuals and talked
22 about, Monument and Findlay, do you recall that?

23 A. Yes, I do.

24 Q. I want to ask you some questions about what
25 occurred over there at that location. I want you to

1 tell us what happened.

2 A. We pulled up in the parking lot. There was, I
3 didn't know the guy's name at that time, now, I now know
4 it as Mark McDonald. We were going to rob him.

5 Q. Where did you first meet up with this guy who you
6 referred to as Mark McDonald?

7 A. DeWeese Parkway. Not DeWeese Parkway, Deeds
8 Parkway.

9 Q. Where is that?

10 A. It's in between Webster and Helena.

11 Q. Tell us how you first met up with Mr. McDonald.

12 A. We were over in the queer park, levee, whatever
13 you want to call it. We were over there looking for a
14 fag to rob.

15 Q. And who was with you at that time?

16 A. Weston Lee Howe and Walter Polson.

17 Q. And when you met up with Mr. McDonald, did you
18 have any conversation with him when you first met up
19 with him?

20 A. Briefly.

21 Q. How did that occur?

22 A. What do you mean?

23 Q. Well, how do you talk to or have a conversation
24 with Mr. McDonald briefly over at by the levee?

25 A. Just talk about normal things.